



DEPARTMENT OF AGRICULTURE

3410-02P

Agricultural Marketing Service

7 CFR Parts 27 and 28

[Doc. # AMS-CN-11-0066]

RIN 0581-AD19

Revision of Cotton Classification Procedures for Determining Cotton Leaf Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the procedures for determining the official leaf grade for Upland and Pima cotton. The leaf grade is a part of the official classification which denotes cotton fiber quality used in cotton marketing and manufacturing of cotton products. Previously, the leaf grade was determined by visual examination and comparison to the Universal Cotton Standards for Leaf Grade that serves as the official cotton standards by qualified cotton classers. Amended procedures replace the classer's leaf determination with the instrument leaf measurement made by the High Volume Instrument (HVI) system, which has been used in official cotton classification for Upland Cotton since 1991.

EFFECTIVE DATE: [Insert date 1 day after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384-3060, facsimile (901) 384-3021, or e-mail darryl.earnest@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

AMS Cotton and Tobacco Programs is amending the procedures for providing cotton leaf grade classification services as authorized by the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51-65), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-476), and the U.S. Cotton Futures Act (7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g)). While measurements for other quality factors are performed by precise HVI measurements, manual determinations for leaf grade and extraneous matter are currently part of the official USDA cotton classification. Accurate assignment of leaf grade is of economic importance to all participants along the cotton supply chain since leaf content is all waste and there is a cost factor associated with its removal. Furthermore, since small leaf particles cannot always be removed, these particles detract from the quality and, therefore, the value of the finished product.

AMS has HVIs with the ability to optically identify, with a high level of confidence, the number of leaf particles (Particle Count) and to measure the surface area covered by non-lint particles (Area). AMS then applies mathematical algorithms to correlate Particle Count and Area data to the Universal Cotton Standards for Leaf Grade which serve as the ultimate comparison for cotton grading. A pilot project was conducted by AMS during 2009 and 2010 cotton classing seasons to evaluate the accuracy of the proposed instrument leaf grade

determination process. Results showed that the HVI measures leaf as compared back to the Universal Cotton Standards for Leaf Grade more accurately than cotton classers. This rule amends the cotton classification process, replacing the classer's leaf determination with the instrument leaf measurement made by the HVI system. Instrument leaf grading is expected to improve the repeatability, consistency and accuracy of leaf grade classification data provided to the cotton industry, while improving operational efficiency.

In section 27.2 (n), the definition of the term ``classification" is revised to reflect the changes in procedures made under 7 CFR part 28.

Also under 7 CFR part 27, section 27.31 is revised to reflect the deletion of the requirement for cotton classers to manually determine leaf grade. The revised section reflects the changes made in procedures for determination of cotton quality in accordance with the official standards.

In 7 CFR part 28, section 28.8 is revised to reflect the change in cotton classification procedures which replaces classer visual examinations to determine leaf grade with instrument leaf measurement by HVI systems.

In addition, miscellaneous other changes are made to 7 CFR parts 27 and 28 to better reflect current procedures in view of leaf determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees are specified.

Summary of Comments

A proposed rule was published on December 23, 2011, with a comment period of December 23, 2011 through January 9, 2012 (76 FR 80278). AMS received four comments: one from a national trade organization that represents approximately 80 percent of the US cotton

industry, including cotton producers, ginnermen, warehousemen, merchants, cooperatives, cottonseed processors, and textile manufacturers from Virginia to California; one from a national trade organization comprised of eight state and regional membership organizations that represent approximately 680 individual cotton ginning operations in 17 cotton-producing states; one from a national trade organization representing cotton merchant firms that handle over 80 percent of the U.S. cotton sold in domestic and foreign markets; and one from an individual commenter who grades cotton. The comments from the trade organizations were supportive of both the proposed changes while the individual commenter was opposed. The comments may be viewed at www.regulations.gov.

Comments from the three national trade organizations expressed support for AMS using instrument leaf grading as the method for determining official leaf grades. Furthermore, each of these organizations recognized how thorough testing conducted by AMS throughout both the 2009 and 2010 classing seasons demonstrated improvements in both the consistency and repeatability of leaf grade determination.

One individual commenter expressed concerns about the accuracy of instrument-determined leaf grades, the timing of the regulatory change, and the length of the comment period. The commenter stated their belief that instrument leaf grading is not a more accurate means to grade cotton over a human classer. AMS began using the instrument-based system on a trial basis, with the ability of classers to overwrite inaccurately assigned data, during the 2009 and 2010 cotton crops. Results demonstrated significant improvements in accuracy and repeatability as factors such as grader fatigue and central tendency were eliminated. Trial results were presented at numerous open-forum discussions conducted throughout the Cotton Belt to ensure that technical and operational information was fully and accurately communicated to the

various segments of the U.S. cotton industry. AMS graders in all field offices evaluated the process change for accuracy, provided feedback, and were briefed on the impact the change would have on streamlining their duties. AMS integrated these graders' feedback to help refine the computer system used for assigning the leaf grade.

The timeline for implementing the process change was scheduled around the completion of critical software programming modifications made to more than four hundred proprietary AMS Information Technology (IT) programs. These computer programs ensure the accurate calculation, secure storage, and seamless flow of cotton quality data, while providing timely information to managers for the evaluation of equipment and employees. With the industry's acceptance, approval, and recommendation to implement, the expectation was that software modifications and the regulatory process would conclude concurrently prior to the beginning of the 2011 crop. However, changes in the timeline have resulted in finalization at this time.

The comment period time frame was deemed appropriate to implement instrument leaf grading as soon as possible in order to allow the cotton industry to fully benefit from the increased accuracy and repeatability of cotton leaf data provided by instrument leaf grading during the current classing season. The timing of the comment period fell coincidentally during the Annual Cotton Beltwide Conference – the largest single gathering of representative of all segments of the U.S. cotton industry. AMS used this forum to notify constituents of the opportunity to submit comments.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612.), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial

number of small entities. Fees paid by users of the service are not changed by this action; implementation of the new procedures indicates the existing fees remain sufficient to fully reimburse AMS for provision of the services.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act of 1923, as amended, the Cotton Statistics and Estimates Act of 1927, and the U.S. Cotton Futures Act. The majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR §121.201). The change in procedures will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Universal Cotton Standards for Leaf Grade established and maintained by the Department;

(2) The HVI measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 2010 crop, 17.6 million bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Futures classification services provided for merchants during the same period totaled approximately 750 thousand bales.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the

information collection requirements contained in the regulation to be amended is currently approved under OMB control number 0581-0008, Cotton Classing, Testing and Standards.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of the rule until 30 days after publication in the Federal Register because: (1) the 2011 cotton crop year has already begun; (2) the industry is familiar with instrument leaf grading process as AMS implemented a pilot project to evaluate the accuracy of the determination for crop years 2009 and 2010; and (3) there is overall industry support for this change.

List of Subjects

7 CFR Part 27

Commodity Futures, Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 are amended as follows:

PART 27--[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (n) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) Classification. The classification of any cotton shall be determined by the quality of a sample in accordance with the Universal Cotton Standards (the official cotton standards of the United States) for the color grade, the leaf grade, and fiber property measurements of American Upland cotton. High Volume Instruments will determine all fiber property

measurements except extraneous matter. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter.

* * * * *

3. Section 27.31 is revised to read as follows:

§ 27.31 Classification of Cotton.

For purposes of subsection 15b (f) of The Act, classification of cotton is the determination of the quality of a sample in accordance with the Universal Cotton Standards (the official cotton standards of the United States) for the color grade and leaf grade of American upland cotton, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments.

PART 28—[AMENDED]

3. The authority citation for 7 CFR part 28 continues to read as follows:

Authority: 7 U.S.C. 55 and 61

4. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of The Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Universal Cotton Standards (the official cotton standards of the United States) for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will

determine all fiber property measurements except extraneous matter, special conditions and remarks. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter, special conditions and remarks and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments. The classification record of a Classing Office or the Quality Control Division with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: March 30, 2012

Robert C. Keeney
Acting Administrator
Agricultural Marketing Service.

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